

**FILED**

JUL 1 2024

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

MARK ANTHONY ORTEGA

Plaintiff,

v.

DANIEL GILBERT FIELDS and ERIC DOE,

Defendants.

**Case No. 5:24-cv-00440-OLG-HJB**

**PLAINTIFF'S MOTION FOR ALTERNATIVE SERVICE OF PROCESS**

Plaintiff Mark Anthony Ortega ("Ortega") files this Motion for Alternative Service of Process, asking the Court for an order authorizing alternative service of process upon Defendant Daniel Gilbert Fields ("Fields").

**INTRODUCTION**

1. Ortega brought this action for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. ("TCPA"), and the Texas Business and Commercial Code, Chapter 302 ("Tex. Bus. & Com. Code") arising out of Defendants Daniel Gilbert Fields and Eric Doe practices of initiating unwanted and unsolicited telemarketing calls.

2. Despite Plaintiff's diligent efforts, traditional service of process upon Defendant Fields has proven unsuccessful due to his evasive conduct.

3. Therefore, Plaintiff requests this Court to authorize alternative service through one or more of the following methods: (1) delivery to a person of suitable age and discretion residing

at Defendant's residence; (2) affixation to the door of Defendant's residence; and (3) email to an address known to be actively utilized by Defendant.

### **FACTUAL BACKGROUND**

4. On or about March 14, 2024, Plaintiff received an unsolicited telemarketing call from Defendant Fields in violation of the TCPA and Texas Business & Commercial Code.

5. In an attempt to resolve this matter informally, on March 14, 2024, Plaintiff, through his attorney at the time, sent a demand letter to Defendant Fields at the email address dan@franconsultantgroup.com.

6. On March 15, 2024, Plaintiff received a response to the demand letter from Defendant Fields, confirming he received the demand letter and uses the email address dan@franconsultantgroup.com.

7. Plaintiff filed his original complaint in this matter on April 22, 2024.

8. On or around June 6, 2024, Plaintiff retained a private process server to personally serve Defendant Fields at his residence.

9. Exhibit A attached hereto as Exhibit B and incorporated herein by reference for all purposes, includes results from searches conducted through CBC, Accurint, and TLO, all of which confirm that 1263 White Sands Dr, San Marcos, CA 92078 is a valid address for Defendant Fields and is associated with his most recent driver's license.

10. Beginning on or around June 14, 2024, a private process server attempted to personally serve Defendant Fields at his last known residence on four separate occasions: June 14, 2024, June 18, 2024, June 20, 2024, and June 22, 2024. These attempts are documented in the attached Proof of Service ("Proof of Service"), attached hereto as Exhibit B and incorporated herein by reference for all purposes.

11. On June 22, 2024, the process server left a voicemail message for Defendant Fields at a phone number ending in 0109, which features Defendant's voice on the answering machine message. Later that day, an individual identifying himself as Defendant Fields returned the call but refused to cooperate with service, stating "will not be available to accept any delivery." (Proof of Service).

12. Despite these attempts, Defendant Fields has successfully evaded service of process.

### **ARGUMENT AND AUTHORITIES**

13. Federal Rule of Civil Procedure 4(e)(1) permits service of process in accordance with the law of the state where the court is located or where service is made. Texas Rule of Civil Procedure 106(b) authorizes alternative service when service through the methods prescribed by Rule 106(a) has been attempted but unsuccessful. *See* Tex. R. Civ. P. 106(a), (b).

14. Here, Plaintiff has satisfied the requirements for alternative service. The Proof of Service details Plaintiff's unsuccessful attempts to serve Defendant Fields through traditional means. Defendant's evasive conduct, as demonstrated by his refusal to accept service and his statement that he "will not be available to accept any delivery," further supports Plaintiff's request for alternative service. (Proof of Service).

15. Moreover, Plaintiff proposes alternative service methods reasonably calculated to provide Defendant Fields with actual notice of this lawsuit:

**a. Delivery to a Person of Suitable Age and Discretion Residing at Defendant's Residence:** This method is permitted by Federal Rule of Civil Procedure 4(e)(2)(B) and ensures delivery to an individual likely to bring the lawsuit to Defendant's attention.

b. **Affixation to the Door of Defendant's Residence:** This method provides an additional layer of notice when delivery to a person at the residence is unsuccessful.

c. **Email to dan@franconsultantgroup.com:** This method is warranted by Defendant's demonstrated use of this email address to communicate regarding this case.

**CONCLUSION**

16. For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion for Alternative Service of Process and authorize service upon Defendant Daniel Gilbert Fields through one or more of the following methods:

a. Delivery of a copy of the Summons, Complaint, and this Order to a person of suitable age and discretion residing at 1263 White Sands Dr, San Marcos, CA 92078.

b. Affixation of a copy of the Summons, Complaint, and this Order to the front door at 1263 White Sands Dr, San Marcos, CA 92078.

c. Email to dan@franconsultantgroup.com.

Dated: June 25, 2024

Respectfully submitted,

Mark Anthony Ortega  
Plaintiff, Pro Se

By: 

mortega@utexas.edu

PO Box 702099

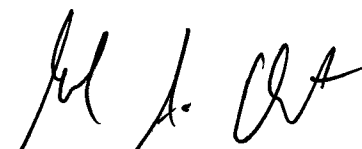
San Antonio, TX 78270

Telephone: (210) 744-9663

**CERTIFICATE OF SERVICE**

I hereby certify that on June 25, 2024, a true and correct copy of the foregoing Plaintiff's Motion for Alternative Service of Process was served upon Defendant Daniel Gilbert Fields via Certified Mail, Return Receipt Requested, postage prepaid, to the following address:

Daniel Gilbert Fields  
1263 White Sands Dr  
San Marcos, CA 92078

A handwritten signature in black ink, appearing to read 'M. A. Ortega', is written over a horizontal line.

Mark Anthony Ortega

**EXHIBIT A**

## Exhibits

**Defendant:** Daniel Gilbert Fields

**Address:** 1263 White Sands Dr, San Marcos, San Diego County, CA 92078

### CBC Innovis Search Results

Address	Business Indicator	First Reported	Last Reported
1263 White Sands Dr, San Marcos, CA 92078		01/04/2004	
16629 CIMARRON CREST DR, SAN DIEGO, CA 92127		02/19/2003	
1979 HIGHWAY 42, CHERRY VALLEY, AR 72324		10/17/2001	
193 COUNTY ROAD 219, CHERRY VALLEY, AR 72324	x	07/30/2000	
721 TEALWOOD LN, CORDOVA, TN 38018		12/30/1998	

### Accurant Search Results

Address	Business Indicator	First Reported	Last Reported
7480 MIRAMAR RD STE 202, SAN DIEGO, CA 92126-4220	x	03/01/2007	03/01/2007
1263 White Sands Dr, San Marcos, CA 92078		12/01/2003	03/01/2024
16629 CIMARRON DR, SAN DIEGO, CA 92128 (Verification Level: Street Partial)		03/01/2003	03/01/2003
16629 CIMARRON CREST DR, SAN DIEGO, CA 92127		01/01/2003	12/01/2003
1979 HIGHWAY 42, CHERRY VALLEY, AR 72324		02/01/2001	03/01/2003
193 COUNTY ROAD 205, CHERRY VALLEY, AR 72324-8637		11/01/2000	11/01/2000
PO BOX 306044, HENDERSON, NV 89077 (Verification Level: Street Partial)		08/01/2000	08/01/2000
193 219 CIR, CHERRY VALLEY, AR 72324 (Verification Level: None)		07/01/2000	07/01/2000
193 COUNTY ROAD 219, CHERRY VALLEY, AR 72324	x	06/01/2000	11/01/2002
4465 POPLAR AVE STE 260, MEMPHIS, TN 38117-3760	x	12/01/1998	02/01/2003
721 TEALWOOD LN, CORDOVA, TN 38018		06/01/1998	03/01/2015
1979 HIGHWAY, CHERRY VALLEY, AR 72324-8632 (Verification Level: None)			
193 COUNTY RD, CHERRY VALLEY, AR 72324 (Verification Level: None)			

## Exhibits

### TLO Search Results

Address	Business Indicator	First Reported	Last Reported
543 ENCINITAS BLVD, ENCINITAS, CA 92024 (Verification Level: Premises Partial)	x	08/23/2004	08/23/2004
5443 W 119TH ST, INGLEWOOD, CA 90304		08/13/2004	08/13/2004
<b>1263 White Sands Dr, San Marcos, CA 92078</b>		12/01/2003	06/06/2024
193 COUNTY ROAD 219, CHERRY VALLEY, AR 72324	x	09/26/2001	01/23/2003
16629 CIMARRON CREST DR, SAN DIEGO, CA 92127		03/01/2001	03/20/2004
PO BOX 306044, HENDERSON, NV 89077 (Verification Level: Street Partial)		08/01/2000	11/17/2003
1979 HIGHWAY 42, CHERRY VALLEY, AR 72324		06/16/2000	04/13/2003
35 HIGHLAND RD APT 1403, BETHEL PARK, PA 15102		10/01/1999	11/10/2003
721 TEALWOOD LN, CORDOVA, TN 38018		05/01/1998	01/23/2013
250 ARBOR COMMONS CIR, MEMPHIS, TN 38120 (Verification Level: Premises Partial)		09/09/1997	09/09/1997
225 HIGHWAY 1B, CHERRY VALLEY, AR 72324		05/30/1997	05/30/1997
11523 OLDE TIVERTON CIR APT 306, RESTON, VA 20194		04/01/1996	04/01/1996
3001 PARK CENTER DR APT 920, ALEXANDRIA, VA 22302		10/01/1995	01/16/1997
441 ASBURY CMNS APT A, ATLANTA, GA 30338		03/01/1995	01/23/2003
HIGHLAND TERRACE APTS, 3350 ALTAMONT RD S, BIRMINGHAM, AL 35205 (Verification Level: Premises Partial)		11/01/1994	04/01/1996
6855 CLUB RIDGE CIR APT 120, MEMPHIS, TN 38115		10/01/1994	10/01/1994
318 SPRINGS AVE, BIRMINGHAM, AL 35242		06/01/1994	01/23/2003
250 ARBOR COMMONS CIR APT 307, MEMPHIS, TN 38120		06/01/1988	10/01/1997
1816 HIGHPOINT BLVD, MOBILE, AL 36618 (Verification Level: Street Partial)			
103 PACES BROOK AVE # 317, COLUMBIA, SC 29212 (Verification Level: Premises Partial)	x		

### Drivers Licenses (TLO)

**DL#:** (redacted), **DL State:** CA, **Reported:** 01/27/2014, **Name:** DANIEL G FIELDS, **Address:** 1263 WHITE SANDS DR, SAN MARCOS, CA 92078, **DOB:** (redacted)

**DL#:** (redacted), **DL State:** TN, **Reported:** 04/18/2000, **Name:** DANIEL G FIELDS, **Address:** 1979 HIGHWAY 42, CHERRY VALLEY, AR 72324, **DOB:** (redacted)

### Vehicles (TLO)

None reported.

### Forwards reported per National Change of Address (NCOA) service

None reported.

### Property Ownership (TLO)

**Address:** 1263 White Sands Dr, San Marcos, CA 92078-5489, **Owner(s):** DANIEL FIELDS, WHITNEY FIELDS, **Purchase Date:** 11/2003

**Address:** 5443 W 119th St, Inglewood, CA 90304-1025, **Owner(s):** WILLIAM CHICA, A CHICA INGRID, **Purchase Date:** 04/2018



**EXHIBIT B**

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. **5:24-CV-00440-OLG-HJB****PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*


This summons for **Daniel Gilbert Fields**  
was recieved by me on **6/11/2024**:

- ☐ I personally served the summons on the individual at *(place)* on *(date)* ; or
- ☐ I left the summons at the individual's residence or usual place of abode with *(name)* , a person of suitable age and discretion who resides there, on , and mailed a copy to the individual's last known address; or
- ☐ I served the summons on *(name of individual)* , who is designated by law to accept service of process on behalf of *(name of organization)*; or
- ☒ I returned the summons unexecuted because ; or
- ☐ Other *(specify)*

My fees are \$ 0 for travel and \$ **75.00** for services, for a total of \$ **75.00**.

I declare under penalty of perjury that this information is true.

Date: **06/23/2024**



Server's signature

**Maria De La Toba**

Printed name and title

**3652 Park Blvd  
5  
San Diego, CA 92103**

Server's address

Additional information regarding attempted service, etc:

6/14/2024 9:01 AM: There was no answer at the address. Few days in driveway.  
6/18/2024 9:24 AM: There was no answer at the address.  
6/20/2024 9:12 AM: There was no answer at the address.  
6/22/2024 2:26 PM: There was no answer at the address.  
6/22/2024 2:36 PM: I placed a phone call to number ending in 7128 resulting in number disconnected.  
6/22/2024 2:37 PM: I placed a phone call to number ending in 0109 resulting in leaving voice mail. He is ID on machine.  
6/22/2024 2:49 PM: I received a phone call from number ending in 0109 resulting in address confirmed. I spoke with Daniel Gilbert Fields. The individual appeared to be a male contact. Refused to cooperate said he will not be available



Tracking #: 0135983978



AO 440 (Rev. 06/12) Summons in a Civil Action (Page 3)

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Civil Action No. **5:24-CV-00440-OLG-HJB**

to accept any delivery. I can mail or leave at the door.



Tracking #: 0135983978



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
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MARK ANTHONY ORTEGA

Plaintiff,

v.

DANIEL GILBERT FIELDS and ERIC DOE,

Defendants.

**Case No. 5:24-cv-00440-OLG-HJB**

**[PROPOSED] ORDER ON PLAINTIFF'S MOTION FOR ALTERNATIVE SERVICE**

CAME ON TO BE CONSIDERED Mark Anthony Ortega's Motion For Alternative Service and after considering said motion, as well as the supporting Exhibits, the court finds Plaintiff's attempts to serve Daniel Gilbert Fields ("Defendant") have been unsuccessful and find the Substitute Service requested in Plaintiff's motion will be reasonably effective to give Defendant notice of the suit.

Therefore, the Court GRANTS the motion and authorizes Alternative Service on Daniel Gilbert Fields by any one of the following method(s):

- a. By Delivering a true copy of the Summons, Cover Sheet and Complaint and Order authorizing substituted service attached, with anyone more than sixteen (16) years of age at 1263 White Sands Dr, San Marcos, CA 92078, **OR**,
- b. By Attaching a true copy of the Summons, Cover Sheet and Complaint and Order authorizing substitute service, securely to the front door at 1263 White Sands Dr, San Marcos, CA 92078, **OR**,

c. Email to dan@franconsultantgroup.com

Each of the authorized above described methods is reasonably effective to give Defendant notice of the suit and such service shall be deemed effective as of the date of compliance by Plaintiff.

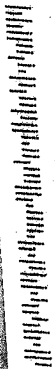
Signed on \_\_\_\_\_, 20\_\_\_\_.

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JUDGE PRESIDING



Mark Ureaga  
152 Beddingfield Dr  
San Antonio, TX 78231



San Antonio Public Records

THU 27 JUN 2024 PM

10 HRS

JUN 11 2024

U.S. District Court  
ENFORCEMENT DIVISION, TX

262 West Nueva Street Room 1-400

San Antonio, TX 78207

RECEIVED

JUL -1 2024

CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY DEPUTY CLERK

CVJ